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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
West Virginia Department of Education	)	CC Docket No. 02-6
In the Schools and Libraries Program	)	

REQUEST FOR WAIVER OF 471 APPLICATION DEADLINE

**WEST VIRGINIA STATE DEPARTMENT OF ED, BEN 126678**  
**FCCRN: 0011863149**

**Relevant 471s: 181005090, 181005092, 181005095, 181005103, 181005106, 181009063, 181042456, 181042457, 181042458, and 181042474**

**(Previous waiver request already filed on behalf of Form 471s: 181005080, 181005084, 181005086, 181005097, 181005102, 181005107, and 181005109.)**

The West Virginia State Department of Education respectfully requests a waiver of the 2018-19 Form 471 application deadline for ten (10) applications that include an additional thirty-one (31) Category 2 funding requests. These applications are for ten (10) school districts and thirty-one (31) schools in West Virginia.

These applications were filed late due to the “unexpected event” of the statewide teacher strike that occurred just days before the FCC Form 471 filing window closed. The West Virginia State Department of Education (WVDE), which diligently works to file applications on behalf of its public schools, could not have possibly anticipated the strike, which literally shut down every school district in the state for a week and a half.

The strike, coupled with the already labor-intensive planning and competitive bidding process, put the filing process behind at such a late date that the WVDE simply could not recover and get the applications filed on time, even though its staff expended a Herculean effort.

As an initial matter, it is critical that the Federal Communications Commission (FCC) understand that the WVDE did not wait until the last minute to file these applications. The process began in early August 2017, and the delays that ultimately resulted in late-filed funding requests were completely unanticipated and halted the application process. Our staff began the process of determining the needs of the districts and schools beginning back in August 2017, using our newly awarded state master contract. To use the state master contract, each district was required to post its needs assessment and complete a walkthrough of each school site. Then the vendors provided mini-bids, where each vendor that was qualified on the state master contract still had to submit pricing information to each individual district in the state to be considered for a contract. Despite being short-staffed, WVDE started the process early, as the first walkthroughs occurred on August 14, 2017 and concluded on January 12, 2018. In all, 95 walkthroughs were completed during this time period.

In the middle of December, USAC released the funding window dates, and those dates resulted in a window closing date only three months later – in March. The deadline was *two months* earlier than the prior year's deadline. Contract vendors were expected to commence bid submission as of January 23, 2018. These 58 days seemed like a reasonable amount of time to evaluate, award and complete E-rate applications. The bids submitted were problematic in that some vendors did not provide correct or complete bids. To ensure a true cost-effectiveness review, per FCC requirements, the WVDE required vendors to submit additional information as necessary so that the bids could be properly analyzed. Of these bids, 91% had critical line items missing that required additional information.

Notwithstanding the delay caused by vendors' incomplete bids, the WVDE was on track with a sufficient timeline to complete until February 28, 2018. This was the first day of a historic teacher strike that closed all schools and district board offices statewide and lasted for nine days. This work stoppage meant that all district staff were inaccessible during this time as 100% of school districts and their board offices were shut down.

These events were completely unexpected, and teachers continued the work stoppage despite threats for legal ramifications from Governor Jim Justice, State Attorney General Patrick Morrissey, and State Superintendent Steven Paine. The strike occurred even though it was illegal under state law. "State law and court rulings give specific parties avenues to remedy such illegal conduct, including the option to seek an injunction to end an unlawful strike."<sup>1</sup> This strike was historically unprecedented since all staff, including service personnel and board office staff, were involved in the work stoppage.<sup>2</sup> One hundred percent of all staff, teachers and service personnel participated in the work stoppage. This was a first on a national level, as previous strikes had not been a full and complete stoppage, with one hundred percent of schools closing and staff being out at the service personnel, teacher and county levels.

The strike also came with unfortunate timing. As staff were completing reviews and awards of E-rate requests, all work came to a screeching halt. This further affected all processes, as when the schools reopened, staff had to deal with the backlog of emails, parent complaints, school re-openings, in addition to ensuring their local E-rate applications were completed. During this time, issues found in the final round of bidding from the mini-bid process had to be addressed simultaneously as staff were still trying to resume basic school activities. This nine-day statewide work stoppage was added to already disrupted school schedules due

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<sup>1</sup> Think Progress, *West Virginia threatens legal action against striking teachers, but they aren't backing down*, <https://thinkprogress.org/west-teachers-strike-continues-c27b0be2223b/> (last visited May 5, 2017).

<sup>2</sup> Charleston Gazette Mail, *WV school employee strike to continue across state*, [https://www.wvgazettemail.com/2018\\_wv\\_teachers\\_strike/wv-school-employee-strike-to-continue-across-state/article\\_d824f764-2c6f-51ac-bf00-68f1873ca2a6.html](https://www.wvgazettemail.com/2018_wv_teachers_strike/wv-school-employee-strike-to-continue-across-state/article_d824f764-2c6f-51ac-bf00-68f1873ca2a6.html) (last visited May 5, 2017).

to snow days. Counties included on this waiver request and their additional snow days between the window open and close include: Kanawha County (3 additional days closed due to snow), Logan County (4 additional days), Monongalia County (6 additional days), Ohio County (5 additional days), Preston County (6 additional days), and Ritchie County (5 additional days). With the experience during the October 1 through 17, 2013 government shutdown, the FCC staff can, no doubt, relate to the challenges that are faced when staff has been prohibited from working, then return to a backlog, and attempt to triage all of the previous items pending, along with the newly added issues. This delayed the process of the districts reviewing mini-bids and determining awards. The result was that we were unable to meet the Form 471 Filing Window Deadline for reasons beyond our control.

When the time came to compete the Form 471 applications, the WVDE had all staff members working to complete the Form 471 application process to attempt to file in a timely manner. As previously stated, the WVDE was able to submit most of its Form 471s either on time or within fourteen (14) days of the close of the funding window, despite difficulty with the the E-rate Productivity Center (EPC) and USAC-provided bulk upload templates. The bulk-upload spreadsheets would validate fine, and then when uploaded into the E-rate Productivity Center, the system would note an error. The system, however, does not identify which line item(s) had issues, and hunting for the needle in a haystack was time consuming.

The staff went to extraordinary lengths to ensure completion of the project, sacrificing their personal time and health. The WVDE staff worked diligently throughout the months leading up to the funding window close, but during the last few days of the grace period and beyond, the State E-rate Coordinator worked from Wednesday, April 4<sup>th</sup> through 1:00 am on Saturday, April 7<sup>th</sup>, with two brief naps totaling five (5) hours out of the 65 worked. All WVDE staff worked for twenty-four (24) hours straight from 8:00 am on Thursday, April 5<sup>th</sup> through 8:00 am Friday, April 6<sup>th</sup> without sleep or leaving the building, in an attempt to complete what forms could be completed, with the hope of attaining funding for these school requests.

We hope that these unprecedented events may lead to a successful waiver and implementation to further instruction for students in West Virginia. We are aware that, in the past, the FCC has granted waivers up to thirty days beyond the deadline in extenuating circumstances. See the *Bishop Perry Order* and the *Academy for Academic Excellence Order*. In these cases, the Commission and Bureau, respectively, granted waivers to applicants who missed the FCC Form 471 filing deadline due to technical malfunctions, school reorganizations, a misunderstanding related to the filing deadline, personal staff emergencies, inadvertent errors, or circumstances beyond their control, including inclement weather.<sup>3</sup> The Commission established the standard for granting a waiver when application was filed late due to an “unexpected event...caus[ing] unanticipated delays.”<sup>4</sup> Consistent with Commission-level precedent, in 2007 in the *Academy for Academic Excellence Order*, the Bureau also granted waivers where the applicant filed late due to “delays beyond its control.” In 2008, the Bureau released the *Acorn Public Library District Order*, in which it similarly granted waivers of the FCC Form 471 filing window deadline to applicants that filed their FCC Form 471 applications late due to delays caused by circumstances beyond their control.<sup>5</sup> While these orders were issued 10 years ago, the Commission just this past October used the *Academy of Academic Excellence Order* to grant a waiver allowing the filing of a FCC Form 471 submitted about six weeks late in funding year 2017.<sup>6</sup> In that case, the applicant filed late because of an error apparently created by EPC. The late filings at issue in this waiver request are at least as deserving of a waiver as those requests. As described above, the teacher strike was unprecedented, and out of the control of the individual school districts and the state Department of Education.

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<sup>3</sup> See *id.* at 5321-22, para. 12; *Request for Review of the Decision of the Universal Service Administrator by Academy for Academic Excellence, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-539076, 539722, *et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 4747, 4748-49, para. 5 (Wireline Comp. Bur. 2007) (*Academy for Academic Excellence Order*); 47 C.F.R. § 54.507(c).

<sup>4</sup> *Academy of Math and Science Order*, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-10-122A1\\_Rcd.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-10-122A1_Rcd.pdf) (last viewed May 5, 2018)

<sup>5</sup> *Id.* at 15478-79, para. 7. For example, in the *Acorn Public Library District Order*, an applicant tried to file online with a USAC staff person’s assistance but the system did not accept the application. *Id.*

<sup>6</sup> Streamlined Public Notice, Oct. 31, 2017, footnote 10 (Child Care Resource Center).

In addition, the FCC also grants waiver requests without any justification required where petitioners' applications were completed shortly after the filing window closed.<sup>8</sup> Based on this precedent, note that the request that West Virginia is submitting at this time is not requesting an unprecedented amount of time, as these additional applications were submitted ***between minutes after and up to only one day, one hour and one minute*** beyond the typical fourteen (14) day period for which the FCC has historically granted waivers, as provided in the *Academy of Math and Science Tucson, AZ, et al. Order* (FCC-10-122A1), dated July 8, 2010.

Further, this is not a substantive violation; it is a procedural issue. In previous decisions, like the *Academy of Math and Science Order*, the Commission found that, “[w]hile filing and other procedural deadlines are necessary to maintain the efficient administration of the application process, we find that these applications were filed close enough to the deadline so as not to impair the administration of the program.”<sup>10</sup> The West Virginia Deadline Waiver Request is around half the time of what the FCC has granted waivers for in this example.

Granting these requests for waiver should not unduly task the Universal Service Fund, should they all be fully funded. Per the February 20<sup>th</sup> funding cap announcement, USAC states that the cap could be as much as \$4,062,030,726, while the demand is only \$2,770,337,983.<sup>12</sup> This is a difference of over \$1.2 billion dollars. This funding is critical to West Virginia schools. The schools have already received major cuts over the past five years. In all, the out-of-window funding commitments at risk are \$1,102,079.79—only 0.085% of the remaining funding cap balance. Without this E-rate support, these schools, in desperate need of network upgrades, will be negatively impacted, and instruction will be harmed without access to a robust wireless network. In the cases of Preston and Ritchie Counties, both have experienced funding loss of their local levies

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<sup>8</sup> *Academy of Math and Science Order*, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-10-122A1\\_Rcd.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-10-122A1_Rcd.pdf) (last viewed May 5, 2018); *See supra* para. 2; *Acorn Public Library District Order*, 23 FCC Rcd at 15476-79, paras 5-8; Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, April 2018.

<sup>10</sup> *Academy of Math and Science Order*, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-10-122A1\\_Rcd.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-10-122A1_Rcd.pdf) (last viewed May 5, 2018).

<sup>12</sup> Federal Communications Commission, *Wireline Competition Bureau Announces E-Rate Inflation-Based Cap For Funding Year 2018*, [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-18-163A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-18-163A1.pdf) (last visited May 5, 2018).

that funded technology projects within the past few days.<sup>13</sup> Kanawha County previously lost their levy and has not regained that funding.<sup>14</sup> This would be an incredible hardship for these districts. Granting this waiver would be in the best interest of the schools and program. Further, granting the waiver will not negatively affect any other applicants as demand is significantly lower than the cap this year.

In the Academy of Math and Science Order, the FCC stated, “we find that rigid adherence to filing procedures does not further the purposes of section 254(h) of the Act or serve the public interest.”<sup>16</sup> Denying these applications does not serve the public interest, nor would requiring this request to be evaluated as a full Commission Order, considering precedent has been set with the award of up to 30 days beyond the deadline in a situation of extenuating circumstances. We therefore request that the FCC approve our waiver request as part of a Public Notice (PN).

Finally, in this instance, there is no issue regarding waste, fraud, abuse, misuse of funds, or a failure to adhere to core program requirements. We believe that good cause exists for the FCC to grant the requests for waiver of the FCC Form 471 filing window deadline found in section 54.507(c) of the Commission’s rules and remand the underlying applications listed above to USAC for review and award.<sup>17</sup> The WVDE staff would very much appreciate your support in granting this request for waiver of the filing deadline of March 22, 2018. It will serve the best interest of the students of West Virginia on behalf of our application to ensure adequate connectivity and communications.

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<sup>13</sup> “School Levy Fails by 101 Votes; Volunteer Fire Levy Approved.” The Preston County News and Journal, 9 May 2018, [www.wvnews.com/prestoncountynews/news/school-levy-fails-by-votes-volunteer-fire-levy-approved/article\\_04b44964-69c1-5875-947c-5d56dab066ca.html](http://www.wvnews.com/prestoncountynews/news/school-levy-fails-by-votes-volunteer-fire-levy-approved/article_04b44964-69c1-5875-947c-5d56dab066ca.html); Erb, Michael. “Amid Bond Defeat, Ritchie County Schools Still Seeking Superintendent.” The Parkersburg News and Sentinel, 10 May 2018, [www.newsandsentinel.com/news/local-news/2018/05/amid-bond-defeat-ritchie-county-schools-still-seeking-superintendent/](http://www.newsandsentinel.com/news/local-news/2018/05/amid-bond-defeat-ritchie-county-schools-still-seeking-superintendent/).

<sup>14</sup> Mays, Mackenzie. “Kanawha Voters Overwhelmingly Say No to Levy.” Charleston Gazette-Mail, 9 Nov. 2013, [www.wvgazetteemail.com/news/kanawha-voters-overwhelmingly-say-no-to-levy/article\\_536dc655-32b3-5d60-a882-823eb308c9ad.html](http://www.wvgazetteemail.com/news/kanawha-voters-overwhelmingly-say-no-to-levy/article_536dc655-32b3-5d60-a882-823eb308c9ad.html).

<sup>16</sup> See *id.*; 47 U.S.C. § 254(h).

<sup>17</sup> See 47 C.F.R. § 54.507(c); appendices B and C.

Respectfully submitted this seventeenth day of May, 2018.

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